

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Escrow Agent License of:

No. 07F-BD010-BNK

3 **STRATEGIC TITLE, INC. AND STEVEN P.
4 GROULX, PRESIDENT/OWNER**

CONSENT ORDER

5 700 Tower Drive, Seventh Floor
6 Troy, MI 48098

Petitioners.

7 On August 10, 2006, the Arizona Department of Financial Institutions ("Department") issued
8 a Notice of Hearing, alleging that Petitioners had violated Arizona law. Wishing to resolve this
9 matter in lieu of an administrative hearing, Petitioners consent to the following Findings of Fact and
10 Conclusions of Law, and consent to the entry of the following Order.

11 **FINDINGS OF FACT**

12 1. Petitioner Strategic Title, Inc. ("Strategic") is a Michigan corporation authorized to
13 transact business in Arizona as an escrow agent, license number EA-0906304, within the meaning of
14 A.R.S. §§ 6-801, *et seq.* The nature of Petitioner's business is that of engaging in or carrying on the
15 escrow business or acting in the capacity of an escrow agent within the meaning of A.R.S. § 6-
16 801(6).

17 2. Petitioner Steven P. Groulx ("Mr. Groulx") is the President and Owner of Strategic,
18 and, as such, is authorized to transact business in Arizona as an escrow agent, within the meaning of
19 A.R.S. §§ 6-801, *et seq.*

20 3. On or around January 24, 2006, the Department conducted an examination of
21 Strategic's business affairs. As a result of the examination, the Department discovered the
22 following, Petitioners:

23 a. Failed to obtain the Superintendent's prior approval before changing locations
24 and failed to use their correct name and location on: business signage, on their escrow agent license
25 certificate, and on their letterhead; specifically:

26 ...

- 1 i. Petitioners wrongfully used "Strategic Capital Title, Inc.";
- 2 ii. Petitioners failed to obtain the Superintendent's approval before
- 3 changing their business location; and
- 4 iii. Petitioners failed to pay the required fee and failed to mail their current
- 5 escrow license to the Superintendent along with a change of location
- 6 notice pursuant to A.R.S. § 6-126;
- 7 b. Failed to reconcile the escrow fiduciary checking accounts; failed to adopt a
- 8 systematic internal control structure; failed to maintain records to enable the Superintendent to
- 9 reconstruct the details of each escrow transaction; and failed to preserve the records, books, and
- 10 accounts pertaining to each escrow transaction for at least three years following the final settlement
- 11 date of the transaction; specifically:
- 12 i. Petitioners failed to properly reconcile each of the fiduciary bank
- 13 account balances with the escrow general ledger and with an accurate
- 14 and adequate, aged escrow trial balance report listing;
- 15 ii. Petitioners failed to provide month end general ledger balance data
- 16 because such information is not available by Petitioners use of
- 17 *QuickBooks*® software;
- 18 iii. Petitioners failed to provide aged, accurate, and adequate escrow trial
- 19 balance report listings for the monthly periods from October 2004,
- 20 which is the Petitioners' effective license certificate date, through
- 21 January 31, 2006, which is the most recent month end fiduciary
- 22 account bank statement date of their original Chase Bank, NA, Bank
- 23 One checking account;
- 24 1. Petitioners opened a new JP Morgan Chase Bank, NA (AZ)
- 25 checking account on January 5, 2006 to hold all new Arizona
- 26 escrow transaction funds;

- 1 iv. Petitioners failed to reconcile their original Chase Bank, NA, Bank
2 One checking account to an adequate and accurate escrow trial balance
3 report listing of Arizona escrow account balances since their inception
4 of Arizona escrow activity, which was on March 15, 2005 according to
5 Petitioners' closed escrow register data;
- 6 v. Petitioners failed to reconcile all Arizona escrow transactions through
7 their two (2) aforementioned fiduciary bank checking accounts;
- 8 vi. Petitioners failed to maintain escrow trial balance listings that provide
9 detailed individual trust account information;
- 10 vii. Petitioners escrow trial balance listings failed to provide the escrow
11 closing date and the date of the last transaction;
- 12 c. Improperly labeled fiduciary checking accounts; failed to adopt a systematic
13 internal control structure; and failed to maintain records to enable the Superintendent to reconstruct
14 the details of each escrow transaction; specifically:
- 15 i. Petitioners two (2) trust bank accounts containing Arizona escrow
16 transactions and balances were not adequately labeled as trust, escrow,
17 or any other fiduciary label to indicate that funds were fiduciary funds
18 and not corporate funds;
- 19 d. Commingled trust monies; failed to adopt a systematic internal control
20 structure; failed to maintain records to enable the Superintendent to reconstruct the details of each
21 escrow transaction; and failed to preserve the records, books, and accounts pertaining to each escrow
22 transaction for at least three years following the final settlement date of the transaction; specifically;
- 23 i. Petitioners' Chase Bank, N.A, Bank One checking account contained
24 Arizona escrow balances of escrow transactions commingled with
25 Michigan escrow funds;
- 26 ii. Petitioners failed to maintain a separate individual trial balance report

- 1 listing for Arizona escrow transactions and account balances; and
- 2 iii. Petitioners failed to use adequate procedures to ensure the timely
- 3 reconciliation of Arizona escrow account balances contained in
- 4 escrow checking depository accounts;
- 5 e. Failed to employ an adequate certification of fiduciary account
- 6 reconcilements; failed to adopt a systematic internal control structure; and failed to maintain records
- 7 to enable the Superintendent to reconstruct the details of each escrow transaction; specifically:
- 8 i. Petitioners' reconciliation worksheets for their two (2) trust bank
- 9 accounts did not provide for or include both the preparer's signature,
- 10 the date the document was prepared, and the reviewer's signature or
- 11 initials;
- 12 f. Failed to provide adequate follow up on stale dated outstanding checks; failed
- 13 to adopt a systematic internal control structure; and failed to maintain records to enable the
- 14 Superintendent to reconstruct the details of each escrow transaction; specifically:
- 15 i. Petitioners have nine (9) outstanding checks aged in excess of 180
- 16 days totaling \$14,266.64;
- 17 g. Failed, at least twenty five (25) times, to provide and disclose adequate notice
- 18 of the right to earn interest on all deposited monies to each depositing buyer and seller within three
- 19 days after receipt of escrow monies and failed to maintain records to enable the Superintendent to
- 20 reconstruct the details of each escrow transaction;
- 21 h. Commingled escrow funds; failed to submit their annual audit report, certified
- 22 by a CPA, to the Superintendent; failed to timely file their December 31, 2004 annual audit report;
- 23 and failed to timely file their December 31, 2004 and June 30, 2005 semi-annual financial and
- 24 escrow report; specifically:
- 25 i. Petitioners commingled fiduciary funds with corporate assets as
- 26 evidenced on the company's balance sheet;

- 1 i. Accepted escrows in which a participant in the escrow is an affiliate of the
2 escrow agent; failed to disclose, at least twenty five (25) times, their affiliated relationship with
3 Strategic Capital Mortgage to all nonaffiliated escrow participants in writing;
- 4 j. Failed to adopt a systematic internal control structure; specifically:
- 5 i. Petitioners failed to provide adequate security and control over the
6 unused check stock supplies;
- 7 ii. Petitioners failed to periodically change computer system access
8 passwords; and
- 9 iii. Petitioners failed to develop and implement follow up procedures for
10 the management of outstanding escrow balances, outstanding escrow
11 disbursement checks, and non-sufficient funds checks deposited into
12 escrow account balances;
- 13 k. Commingled escrow fiduciary funds with corporate income account funds;
14 specifically:
- 15 i. Petitioners improperly charged escrow parties "release and
16 reconveyance tracking fees" and "release and reconveyance recording
17 fees" by transferring the unearned fees from escrow funds immediately
18 into the corporate income account at the close of escrow in at least
19 twenty five (25) transactions;
- 20 l. Failed to utilize and follow an adequate schedule of escrow fees; specifically:
- 21 i. Petitioners failed to charge escrow parties the exact third party pass-
22 through costs in at least twenty (20) transactions;
- 23 m. Deviated from their filed and approved escrow rates at least ninety two (92)
24 times;
- 25 n. Failed to maintain records to enable the Superintendent to reconstruct the
26 details of each escrow transaction and failed to keep and maintain, at all times, suitable records of all

1 escrow transactions; specifically:

- 2 i. Petitioners failed to document the escrow recording date in at least
3 eleven (11) escrow files;
- 4 ii. Petitioners failed to provide adequate detail and documentation in
5 escrow files to support express mail/overnight fees that were charged
6 to escrow parties in at least nineteen (19) transactions;
- 7 iii. Petitioners failed to provide adequate detail and documentation in
8 escrow files to support local messenger/courier fees that were charged
9 to escrow parties in at least twenty one (21) transactions;
- 10 iv. Petitioners failed to provide adequate detail and documentation in
11 escrow files to support wire fees that were charged to escrow parties in
12 at seven (7) transactions;
- 13 v. Petitioners failed to maintain detailed escrow fee calculation
14 worksheets in at least twenty five (25) transactions;
- 15 vi. Petitioners failed to maintain copies of notary fees billings in the
16 escrow files from VIP Mortgage, a third-party vendor, in at least
17 twenty five (25) transactions; and
- 18 vii. Petitioners failed to maintain copies of "E-Doc" cover letters,
19 instruction sheets, and other documentation to provide adequate
20 support for each fee charged to escrow parties in at least nine (9)
21 transactions.

22 4. Based upon the above findings, the Department issued and served upon Strategic and
23 Mr. Groulx an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of
24 Order ("Cease and Desist Order") on June 30, 2006.

25 5. On July 19, 2006, Petitioners filed a Request For Hearing to appeal the Cease and
26 Desist Order.

6. Respondents have voluntarily agreed to take corrective action and have attempted to comply with the Department's requests. However, such finding does not waive any provisions of this Consent Order.

CONCLUSIONS OF LAW

1. Pursuant to A.R.S. Title 6, Chapter 7, the Superintendent has the authority and duty to regulate all persons engaged in the escrow agent business and with the enforcement of statutes, rules, and regulations relating to escrow agents.

2. By the conduct set forth above in the Findings of Fact, Strategic and Mr. Groulx violated the following:

- a. A.R.S. §§ 6-813(A) and (B), A.A.C. R20-4-701 by failing to obtain the Superintendent's prior approval before changing locations and failing to use their correct name and location on: business signage, on their escrow agent license certificate, and on their letterhead;
- b. A.R.S. §§ 6-834(A), 6-841(B), A.A.C. R20-4-702 and A.A.C. R20-4-703 by failing to reconcile the escrow fiduciary checking accounts; failing to adopt a systematic internal control structure; failing to maintain records to enable the Superintendent to reconstruct the details of each escrow transaction; and failing to preserve the records, books, and accounts pertaining to each escrow transaction for at least three years following the final settlement date of the transaction;
- c. A.R.S. §§ 6-834(A), 6-841(B), and A.A.C. R20-4-702 by improperly labeling fiduciary checking accounts; by failing to adopt a systematic internal control structure; and by failing to maintain records to enable the Superintendent to reconstruct the details of each escrow transaction;
- d. A.R.S. §§ 6-841.01, 6-834(A), 6-841(B), A.A.C. R20-4-702 and A.A.C. R20-4-703 by commingled trust monies; by failing to adopt a systematic internal control structure; failing to maintain records to enable the Superintendent to reconstruct

1 the details of each escrow transaction; and failing to preserve the records, books,
2 and accounts pertaining to each escrow transaction for at least three years
3 following the final settlement date of the transaction;

- 4 e. A.R.S. §§ 6-841(B), and A.A.C. R20-4-702 by failing to employ an adequate
5 certification of fiduciary account reconcilements; failing to adopt a systematic
6 internal control structure; and failing to maintain records to enable the
7 Superintendent to reconstruct the details of each escrow transaction;
- 8 f. A.R.S. §§ 6-834(A), 6-841(B), and A.A.C. R20-4-702 by failing to provide
9 adequate follow up on stale dated outstanding checks; failing to adopt a
10 systematic internal control structure; and failing to maintain records to enable the
11 Superintendent to reconstruct the details of each escrow transaction;
- 12 g. A.R.S. §§ 6-834(D) and A.A.C. R20-4-702 by Failing, at least twenty five (25)
13 times, to provide and disclose adequate notice of the right to earn interest on all
14 deposited monies to each depositing buyer and seller within three days after
15 receipt of escrow monies and failing to maintain records to enable the
16 Superintendent to reconstruct the details of each escrow transaction;
- 17 h. A.R.S. §§ 6-832(A), 6-832(B), 6-832(C), 6-841(B)(2), and 6-841.01(A) by
18 commingling escrow funds; failing to submit their annual audit report, certified by
19 a CPA, to the Superintendent; failing to timely file their December 31, 2004
20 annual audit report; and failing to timely file their December 31, 2004 and June
21 30, 2005 semi-annual financial and escrow report;
- 22 i. A.R.S. §§ 6-840(A) by accepting escrows in which a participant in the escrow is
23 an affiliate of the escrow agent and failing to disclose, at least twenty five (25)
24 times, their affiliated relationship with Strategic Capital Mortgage to all
25 nonaffiliated escrow participants in writing;
- 26 j. A.R.S. §§ 6-841(B) by failing to adopt a systematic internal control structure;

- k. A.R.S. §§ 6-834(A), 6-841.01(A) by commingling escrow fiduciary funds with corporate income account funds;
- l. A.R.S. § 6-846.01(A) by failing to utilize and follow an adequate schedule of escrow fees;
- m. A.R.S. § 6-846.04(A) by deviating from their filed and approved escrow rates at least ninety two (92) times;
- n. A.R.S. § 6-831 and A.A.C. R20-4-702 by failing to maintain records to enable the Superintendent to reconstruct the details of each escrow transaction and failing to keep and maintain, at all times, suitable records of all escrow transactions.

3. Petitioners have not conducted business in accordance with the law and violated Title 6, Chapter 7 and the rules relating to this chapter, which are grounds for license denial, suspension, or revocation pursuant to A.R.S. § 6-817(A)(2).

4. Petitioners have failed to maintain an adequate control structure, which is grounds for license denial, suspension, or revocation pursuant to A.R.S. § 6-817(A)(12).

5. Petitioners failed to authorize each financial institution, with which it has deposited Arizona trust or fiduciary funds, to notify the Superintendent of any overdraft or check returned for insufficient funds on any trust or fiduciary accounts of the escrow agent, which is grounds for license denial, suspension, or revocation pursuant to A.R.S. § 6-817(A)(14).

6. Pursuant to A.R.S. 6-846.04(B), Petitioners must remit a penalty to the Superintendent in an amount equal to the total deviations, which is \$4,510.00.

7. Pursuant to A.R.S. 6-846.04(B), Petitioners must: refund each overcharge of five dollars or more to the appropriate escrow parties; provide copies of the refund checks to the Superintendent; and advise the Superintendent as to what steps they take to prevent future deviations.

8. The violations, set forth above, constitute grounds for: (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to

1 take the appropriate affirmative actions, within a reasonable period of time prescribed by the
2 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
3 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
4 suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-817; and (4) an order or any
5 other remedy necessary or proper for the enforcement of statutes and rules regulating escrow agents
6 pursuant to A.R.S. §§ 6-123 and 6-131.

7 ORDER

8 1. Strategic and Mr. Groulx shall immediately stop the violations set forth in the
9 Findings of Fact and Conclusions of Law. Strategic and Mr. Groulx:

- 10 a. Shall obtain the Superintendent's prior approval before changing locations and
11 shall use their correct name and location on: business signage, on their escrow
12 agent license certificate, and on their letterhead;
- 13 b. Shall reconcile the escrow fiduciary checking accounts; shall adopt a systematic
14 internal control structure; shall maintain records to enable the Superintendent to
15 reconstruct the details of each escrow transaction; and shall preserve the records,
16 books, and accounts pertaining to each escrow transaction for at least three years
17 following the final settlement date of the transaction;
- 18 c. Shall properly label fiduciary checking accounts; shall adopt a systematic internal
19 control structure; and shall maintain records to enable the Superintendent to
20 reconstruct the details of each escrow transaction;
- 21 d. Shall not commingle trust monies; shall adopt a systematic internal control
22 structure; shall maintain records to enable the Superintendent to reconstruct the
23 details of each escrow transaction; and shall preserve the records, books, and
24 accounts pertaining to each escrow transaction for at least three years following
25 the final settlement date of the transaction;
- 26 e. Shall employ an adequate certification of fiduciary account reconcilements; shall

1 adopt a systematic internal control structure; and shall maintain records to enable
2 the Superintendent to reconstruct the details of each escrow transaction;

3 f. Shall provide adequate follow up on stale dated outstanding checks; shall adopt a
4 systematic internal control structure; and shall maintain records to enable the
5 Superintendent to reconstruct the details of each escrow transaction;

6 g. Shall provide and disclose adequate notice of the right to earn interest on all
7 deposited monies to each depositing buyer and seller within three days after
8 receipt of escrow monies and shall maintain records to enable the Superintendent
9 to reconstruct the details of each escrow transaction;

10 h. Shall not commingle escrow funds, and shall submit their future annual audit
11 report, certified by a CPA, and their semi-annual financial and escrow reports on
12 a timely basis;

13 i. Shall not accept escrows in which a participant in the escrow is an affiliate of the
14 escrow agent and shall disclose their affiliated relationship with Strategic Capital
15 Mortgage to all nonaffiliated escrow participants in writing;

16 j. Shall adopt a systematic internal control structure;

17 k. Shall not commingle escrow fiduciary funds with corporate income account
18 funds;

19 l. Shall utilize and follow an adequate schedule of escrow fees;

20 m. Shall not deviate from their filed and approved escrow rates;

21 n. Shall maintain records to enable the Superintendent to reconstruct the details of
22 each escrow transaction and shall keep and maintain, at all times, suitable records
23 of all escrow transactions.

24 2. Strategic and Mr. Groulx shall immediately pay to the Department a civil money
25 penalty in the amount of thirty thousand dollars (\$30,000.00). Strategic and Mr. Groulx are jointly
26 and severally liable for payment of the civil money penalty.

3. The provisions of this Order shall be binding upon Strategic and Mr. Groulx, their employees, agents, and other persons participating in the conduct of the affairs of Strategic Title, Inc.

4. This Order shall become effective upon service, and shall remain effective and enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated, or set aside.

SO ORDERED this 27th day of September, 2006.

By: Felecia Rotellini
Felecia A. Rotellini
Superintendent of Financial Institutions

CONSENT TO ENTRY OF ORDER

1. Petitioners acknowledge that they have been served with a copy of the foregoing Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the same, are aware of their right to an administrative hearing in this matter, and have waived the same.

2. Petitioners admit the jurisdiction of the Superintendent and consent to the entry of the foregoing Findings of Fact, Conclusions of Law, and Order.

3. Petitioners state that no promise of any kind or nature has been made to induce them to consent to the entry of this Order, and that they have done so voluntarily.

4. Petitioners agree to cease from engaging in the violative conduct set forth above in the Findings of Fact and Conclusions of Law.

5. Petitioners acknowledge that the acceptance of this Agreement by the Superintendent is solely to settle this matter and does not preclude this Department, any other agency or officer of this state or subdivision thereof from instituting other proceedings as may be appropriate now or in the future.

◀ ▶ ➤

1 6. Steven P. Groulx, signing on behalf of Strategic Title, Inc. and himself, represents
2 that he is the President and Owner and that as such, has been authorized by Strategic Title, Inc. to
3 consent to the entry of this Order on its behalf.

4 7. Petitioners waive all rights to seek judicial review or otherwise to challenge or contest
5 the validity of this Order.

6 DATED this 13 day of SEPT., 2006.

7
8 By: Steven P. Groulx
9 Steven P. Groulx, President and Owner
10 Strategic Title, Inc.

11 ORIGINAL of the foregoing filed this 28th
12 day of September, 2006, in the office of:

13 Felecia A. Rotellini
14 Superintendent of Financial Institutions
15 Arizona Department of Financial Institutions
16 ATTN: June Beckwith
17 2910 N. 44th Street, Suite 310
18 Phoenix, AZ 85018

19 COPY mailed same date to:

20 Allen Reed
21 Administrative Law Judge
22 Office of the Administrative Hearings
23 1400 West Washington, Suite 101
24 Phoenix, AZ 85007

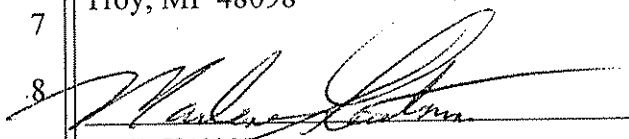
25 Craig A. Raby
26 Assistant Attorney General
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Phoenix, AZ 85007

Robert D. Charlton, Assistant Superintendent
Richard D. Carpenter, Senior Examiner
Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

1 AND COPY MAILED SAME DATE by
2 Certified Mail, Return Receipt Requested, to:

3 Steven P. Groulx, President
4 Strategic Title, Inc.
5 700 Tower Drive, Seventh Floor
6 Troy, Michigan 48098

7 Robert R. Florka, General Counsel
8 Strategic Title, Inc.
9 700 Tower Drive, Seventh Floor
10 Troy, MI 48098

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